

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

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|-----------------------------------|---|-------------------------------------|
| LORENZO DAVILA-RODRIGUEZ, |) | |
| |) | |
| Petitioner/Defendant, |) | |
| |) | CIVIL NO. 08-cv-174-GPM |
| vs. |) | |
| |) | CRIMINAL NO. 02-cr-30081-GPM |
| UNITED STATES of AMERICA , |) | |
| |) | |
| Respondent/Plaintiff. |) | |

MEMORANDUM AND ORDER

MURPHY, District Judge:

This matter is before the Court on Davila-Rodriguez’s motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255.

Davila-Rodriguez pleaded guilty on May 24, 2004, without the benefit of a formal plea agreement or formal stipulation of facts, to one count of conspiracy to possess with intent to distribute more than five kilograms of cocaine in violation of 21 U.S.C. § 846. On February 27, 2006, he was sentenced to a 262 month term of imprisonment, five years supervised release, a fine of \$1,250, and a special assessment of \$100. The Court of Appeals for the Seventh Circuit affirmed his sentence on direct appeal. *United States v. Davila-Rodriguez*, No. 06-1596 (7th Cir. Nov. 17, 2006). On March 6, 2008, the Court received the instant motion pursuant to § 2255.

In his motion, Davila-Rodriguez raises two grounds for relief: (1) that his Sixth Amendment right to confrontation was violated when this Court allegedly used hearsay evidence to increase his sentence; and (2) that his Sixth Amendment right to “proof beyond a reasonable doubt” was violated when this Court allegedly made findings of fact based on a preponderance of evidence.

The Court **ORDERS** the Government to file a response to Davila-Rodriguez's motion within **THIRTY (30) DAYS** of the date of this Order. The Government shall, as part of its response, attach all relevant portions of the record. Furthermore, the Government shall, as part of its response, address whether the motion is timely filed.

IT IS SO ORDERED.

DATED: 3/23/2009

s/ *G. Patrick Murphy*
G. Patrick Murphy
United States District Judge